Present: Pereira J.

1914.

CHELLAPPA *et al. v.* KANAPATHY *et al.*

137—C. R. Chavakachcheri, 19,773.

Tesawalamai—*Inheritance—Sons and undowried daughters succeed to mother's property.*

Under the *Tesawalamai*, where a woman died before the coming into operation of Ordinance No. 1 of 1911, leaving undowried daughters and a son, they jointly (and not the undowried daughters only) were her heirs at law.

THE facts are set out in the judgment.

Balasingham (with him *Arulanandam*), for the plaintiffs, appellants.—Under the *Tesawalamai*, when a woman dies, both her sons and unmarried daughters succeed to her estate. See Muttukristna's *Tesawalamai, 12, 28, 48, 59, 66, 69, 147.*

In *Nagaratnam v. Alagaratnam* [1] the question which the Court had to decide was whether a husband had a right to allot as dowry to his daughters such portions of the dowry property of his deceased wife as he may think fit. It was conceded in this case (*14 N. L. R. 60, see page 63*) in the District Court that both sons and daughters

[1] *(1911) 14 N. L. R. 60.*

inherited the mother's property equally. The only point at issue in the District Court was whether the father had a right to allot the mother's property by way of dowry as he thought fit. In *Nagaratnam v. Alagaratnam*,[1] therefore, the expression of opinion that only daughters succeed to their mother is *obiter*. In *Thiagarajah v. Paranchothipillai* [2] the only point decided was that property inherited by a child from its mother goes on the death of the child to the mother's next of kin, and not to the father. The principle that males take from males and females from females has no application to a case of this kind.

The sections of the *Tesawalamai* indicate clearly that both sons and daughters succeed equally. Counsel also cited D. C. Jaffna, 1,323.[3]

Wadsworth (with him *Sellathurai*), for the respondents.—*Nagaratnam v. Alagaratnam* [1] is a direct authority on this point. The Judges base their decision on the principle that only daughters succeed to their mother. In *11 N. L. R. 345* the Full Court has clearly laid down the principle that females succeed to females. Counsel also relied on *4 Tam. 60*.

Cur. adv. vult.

June 15, 1914. PEREIRA J.—

The question in this case is whether the property of Seethassi devolved, on her death, on her three children, Kathirkamar, Sivakamai, and Letchimy, or only on Sivakamai and Letchimy. These two persons were undowried daughters of Seethassi, while Kathirkamar was her son. The matter really at issue is whether under the *Tesawalamai* the heirs of a woman who dies leaving children—males and females—are only her undowried daughters, or the sons as well. It would be a hopeless task to attempt to answer this question by means of the collection of the laws and customs of the Tamils of Jaffna known as the *Tesawalamai*. It is a crude and primitive compilation, which may fittingly be described in the words of Tennyson, used with reference to another collection of laws, as no other than a " wilderness of single instances;" and it is, I may add, with a feeling of relief that one contemplates the fact that practically the whole of this ill-arranged and ill-expressed mass of law and custom has been recently repealed and replaced by legislation on more modern lines. Cases like the present, of rights of inheritance in respect of the estates of persons who died before the coming into operation of the legislation above referred to, namely, Ordinance No. 1 of 1911, are however still governed by the old law. If we allow ourselves to be guided by the older reported decisions, there will be no difficulty in answering the question mentioned above in

[1] *(1911) 14 N. L. R. 60.* [2] *(1908) 11 N. L. R. 345*
[3] *S. C. Civil Min, March 4, 1914.*

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PEREIRA J.

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favour of both males and females. The numerous decisions cited by the appellant's counsel from Muttukristna's *Tesawalamai* are in favour of the view that sons take of the property left by their mother as well as the undowried daughters. I may mention cases No. 345 at page 12, No. 804 at page 13, No. 5,614 at page 28, Nos. 109 and 261 at page 48, No. 3,228 at page 59, No. 774 at page 66, No. 3,530 at page 69, and No. 2,033 at page 147. But two cases of more recent times have been cited on the other side: *Nagaratnam v. Alagaratnam* [1] and *Thiagarajah v. Paranchothipillai.*[2] I do not think that these cases are quite in point. As regards the former, whatever *obiter* has been given expression to, the question really decided was whether after the death of a wife a conveyance of some property belonging to her separate estate by the surviving husband to her daughter as dowry is an invasion of the rights of the sons. It is clear that it cannot be so, because the wife's property is liable to be given away as dowry to daughters who contract marriages, and in the case of such an eventuality, the husband may well give out of the deceased wife's property, reserving to his sons the whole of his own property, which, of course, was equally liable to be given away as dowry (see paragraph 2 of section 1 of the *Tesawalamai* Code). In the latter case cited above, the question was how the property of a female child inherited from her mother would go on her death without issue and without brothers and sisters. There is a deal of *obiter* in the judgments to the effect that the property of males go in the male line and the property of females go in the female line, but what has been held really is that, owing to the absence of issue, where necessity arises to seek for an heir in the ascending line, the property derived from the father reverts to the father and his relations, and the property derived from the mother to her and her relations. It is manifest that this rule is not applicable when an heir is to be sought for in the descending or collateral line, because the question formulated by the Judges to be answered is whether the property of a daughter dying after her mother without issue or brothers or sisters is inherited by the father. The idea, expressed in the *obiter* referred to above, of the property of males being kept in the male line and of females in the female line can, it is clear, be given no countenance after what appears to have happened, as stated in paragraph 2 of section 1 of the *Tesawalamai* Code, in the time of the Portuguese Governor Don Philip Mascarenha. Until then, as stated in paragraph 1, the husband's property invariably remained with the male heirs and the wife's property with the female heirs, but the change effected rendered both the *modesium* and the *tediatetam* liable equally with the *chidenam* to be drawn from for dowries to daughters. In other words, the rule mentioned in paragraph 1 was no longer to be observed. I need say no more on the subject, because it seems to me that the latest pronouncement

[1] *(1911) 14 N. L. R. 60*

[2] *(1907) 11 N. L. R. 46 and 345.*

of this Court (see 1,323—D. C. Jaffna [1]) is quite in point on the issue in this case. I agree with my brother Ennis in all that he has said in his judgment in that case.

I set aside the decree appealed from, and declare that Kathirkamar was entitled to the property of the estate of Seethassi equally with Sivakamai and Letchimy, and remit the case to the Court below for further hearing.

The appellants will have their costs in both Courts.

Set aside.